

### REMARKS

Applicant thanks the Examiner for the telephone interview dated April 23, 2009, in which claims 1 and 40 and the Burke and Palm references were discussed.

The comments of the Applicant below are each preceded by related comments of the Examiner (in small, bold type) in the Office Action dated January 23, 2009.

**Claims 26, 38, 39 and 41 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.**

Regarding Claims 26, 38, 39, and 41, now requiring “comprise communications standards CDMA, EDGE and WCDMA.” This is subject matter which was not described in the original specification; therefore, new matter. Neither applicant has pointed out where in the original specification support for the subject addition can be found.

This application incorporates by reference U.S. Provisional Application No. 60/426,862. The provisional application described CDMA, EDGE, and WCDMA standards. For example, see pages 3-6, 14, and 19-21 of the provisional application.

**Claims 1-21 and 24-35 rejected under 35 U.S.C. 103(a) as being unpatentable over Burke et al. (US Patent Number 5,406,643) in view of Palm (US Patent Number 6,735,245).**

Regarding claims 1, 8, 15, 40 and 44 Burke et al. disclose an apparatus for allocating channels, comprising:

a memory that stores executable instruction signals (see fig. 2, section 14, ROM);  
and

a processor that executes the instruction signals to (see fig. 2, section 16, CPU):  
determine available channels (see col. 2, lines 44-48, The packet server maintains a session list identifying currently available connection (virtual links) to a specific end point, (see col. 2, lines 25-29, a subscriber unit to select from amongst a plurality of communications media, that particular media for establishing a communications path to a specified end point); and

allocate a channel based on the available channels and the communication standard used by the received first and second wireless message (see col. 2, lines 49-53, The device manager maintains a list specifying the possible communications paths to specific end points and actually controls the communications resources responsible for establishing a communications path).

However, over Burke et al. fail to specifically point out receiving a message having a format that is in compliance with a communication standard, and determine the communication standard used by the received first and second wireless message according to the format of the received first and second wireless message, allocate a channel based on the

available channels and the communications standard used by the received message as claimed.

Palm teaches receiving a first and second wireless message having a format that is in compliance with a communication standard, and determines the communication standard used by the received first and second wireless message according to the format of the received first and second wireless message, and allocate a channel based on the available channels and the communication standard used by the received first and second wireless message (see col. 4-5, lines 63-5, determines the communication standard, of the received examination negotiation information, see col. 5, lines 20-23- the negotiation information being in compliance to a communication standard, the format of the negotiation information reveals the communication standard of the negotiation message);

Palm teaches allocate a channel based on the communication standard used by the received first and second wireless message (see col. 4, lines 44-53, auditing a condition of the communication channel, and selection based on the communication standard and the capability).

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to combine Burke et al.'s invention with Palm's invention, because Palm invention detects various configuration capabilities and limitations of a communication channel, to determine an appropriate communication standard appropriate for the existing line conditions (see palm, col. 2, lines 47-51).

#### Claim 1

Burke does not describe and would not have made obvious "dynamically allocating channels based on the available channels and the wireless communication standards used by the received messages to utilize wireless spectrum according to a current usage pattern," as recited in amended claim 1.

Burke discloses a packet server 34 that maintains a session list identifying currently available connections to a specific end point, and selects a communications path based at least partly upon knowledge of the destination (col. 2, lines 44-48). If the Examiner contends that the communications paths of Burke correspond to the channels of claim 1, then Burke does not disclose or suggest dynamically allocating the communications paths to utilize wireless spectrum according to a current usage pattern, as recited in claim 1.

What is missing in Burke is also not disclosed or suggested by Palm. Palm discloses determining a communication standard for a communication channel based on the quality and capabilities of the communication channel (abstract). Palm does not disclose or suggest dynamically allocating the communication channels to utilize wireless spectrum according to a current usage pattern.

A person of ordinary skill in the art, after reading Burke and Palm, may apply the technique taught in Palm to the system 100 of Burke so that the system 100 selects one of the

communication paths (e.g., 4, 6, and 8 of Burke) based at least partly upon knowledge of the destination (as taught by Burke), and selects an appropriate communication standard from among several standards (as taught by Palm). The combination of Burke and Palm would not have made obvious dynamically allocating channels based on the available channels and the wireless communication standards used by the received messages to utilize wireless spectrum according to a current usage pattern, as recited in claim 1.

Claims 8, 15, 40, and 44 are patentable for at least similar reasons as those applied to claim 1.

All of the dependent claims are patentable for at least the same reasons as those applied to the claims on which they depend.

Any circumstance in which the applicant has addressed certain comments of the examiner does not mean that the applicant concedes other comments of the examiner. Any circumstance in which the applicant has made arguments for the patentability of some claims does not mean that there are not other good reasons for patentability of those claims and other claims. Any circumstance in which the applicant has amended or canceled a claim does not mean that the applicant concedes any of the examiner's positions with respect to that claim or other claims.

Please apply \$260 for the Excess Claims fee and any other charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: April 23, 2009\_\_\_\_\_

/Rex I. Huang/  
Rex I. Huang  
Reg. No. 57,661

Fish & Richardson P.C.  
225 Franklin Street  
Boston, MA 02110  
Telephone: (617) 542-5070  
Facsimile: (617) 542-8906